

No. 11(112)-3Lab-79/693.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workmen and the management of M/s Good Year India Ltd., Ballabgarh.

BEFORE SHRI NATHU RAM SHARMA,
PRESIDING OFFICER,
INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD
Reference No. 106 of 1971
between

THE WORKMEN AND THE MANAGEMENT OF M/S GOODYEAR INDIA LTD., BALLABGARH

Present:

Shri S. R. Gupta, for the workmen.
Shri O. P. Malhotra, for the management.

AWARD

By order No. ID/FD/2-D-71/35376-80, dated 29th November, 1971, the Governor of Haryana, referred the following disputes between the management of M/s Goodyear India Ltd., Ballabgarh and its workmen to this Tribunal, for adjudication, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947:—

- (1) Whether Shri K. C. Sharma, Q. C. is entitled to his maximum hourly rate with retrospective effect ? If not, to what relief he is entitled to ?
- (2) Whether the management should pay to Shri B. S. Verma the rate of a receiving clerk for the period Shri Verma worked as an Expansion Project receiving clerk ? If so, with what details ?
- (3) Whether the retrenchment of Shri V. K. Sachar from the post of painter is justified and in order ? If not, to what relief is he entitled to ?
- (4) Whether the dismissal of Shri Aram Singh, Patwari, is justified and in order ? If not, to what relief is he entitled to ?

On receipt of the order of reference, notices were issued to the parties. The parties appeared and filed their pleadings. On the pleadings of the parties, following issues were framed by my learned predecessor, on 27th May, 1972 :—

- (1) Whether the demands, the subject-matter of the present reference were first raised on the management and rejected by it before taking up the matter for conciliation ? If not, with what effect ?
- (2) Whether Shri V. K. Sachar was never retrenched and, therefore, the present reference is bad in law so far as he is concerned ?
- (3) Whether Shri K. C. Sharma Q. C. is entitled to his maximum hourly rate with retrospective effect ? If not, to what relief he is entitled to ?
- (4) Whether the management should pay to Shri B. S. Verma the rate of a receiving clerk for the period Shri Verma worked as an Expansion Project receiving clerk ? If so, with what details ?
- (5) Whether the retrenchment of Shri V. K. Sachar from the post of Painter is justified and in order ? If not, to what relief is he entitled to ?
- (6) Whether the dismissal of Shri Aram Singh, Patwari is justified and in order ? If not, to what relief is he entitled to ?

And the case was fixed for the evidence of the parties on issues No 1 and 2. The workman examined Shri Y. K. Sharma, President Goodyear Employee Union as WW-1, Shri B. S. Verma, concerned workman, as WW-2, Shri V. K. Sachar as WW-3, and Shri Khushinder Singh as WW-4. Shri Aram Singh, Patwari as WW-5. Shri K. C. Sharma, as WW-6 and closed their case. Then the case was fixed for the evidence of the management who examined Shri K. P. Agrawal, Personal Manager of M/s Modi Rubber Tyre factory as MW-1, Shri S. N. Mathur

their Secretary's Steno as MW-2, Shri V. K. Sharma, their Manager Trainees as MW-3.

A settlement was produced in respect of dispute number 2 which was admitted by the representative for the workman with a prayer that interim award be given as far as that workman was concerned. Therefore, my learned predecessor had given an interim award, dated 14th February, 1974, on dispute number 2 under the reference. Thereafter Shri K. L. Khurana, a representative for the management made a statement on 7th May, 1974. He did not press preliminary objections covered under issues number 1 and 2 and that he had no further evidence to lead and requested that these issues may be treated as on merits along with issue No. 5.

The management also examined Shri A. K. Divedi their Personnel Manager as MW-4. Thereafter the management moved three applications. The workmen filed their reply. Arguments were heard. My learned predecessor decided these applications,—vide his order, dated 9th June, 1975, and recast some issues as issues number 2, 2(a), 2(b) and 2(c) and 5:—

ISSUE No. 2:

Whether Shri V. K. Sachar was transferred as a Dacker as per his own request and as such no industrial disputes existed between the parties on this subject ?

ISSUE No. 2-A:

Whether it is not a case of retrenchment of Shri V. K. Sachar as the retrenchment order was substituted by the order of his transfer as the Packer on his own request ?

ISSUE No. 2(b):

Whether Shri V. K. Sachar is estopped from challenging the validity of the order in question?

ISSUE No. 2(c):

Whether Shri V. K. Sachar had raised a grievance and that grievance was settled by the management on a payment of lump sum amount of Rs. 500

and on this amount he had given an undertaking in writing that he would have no claim of any type in respect of the wages for the back period?

ISSUE No. 5:

Whether the retrenchment of Shri V. K. Sachar from the post of Painter is justified and in order ? If not, to what relief is he entitled to?

The management also examined again Shri K. P. Agrawal, their Labour Law Advisor as MW-5 on four adjourned dates, as his statement was a lengthy one and some times his statement could not be recorded completely for want of some documents.

Shri K. C. Sharma had also moved an application that he had no dispute with the management and did not want to pursue his demand and he demanded for no dispute award as far as his demand was concerned. An interim award was given by me on 6th April, 1977, on dispute number 1 relating to Shri K. C. Sharma.

Then the learned representative for the management Dr. Anand Parkash pointed out that issue No. 2(a), 2(b) and 2(c) were being tried as preliminary. On these issues the management had closed their case,—vide their statement on 9th November, 1976. Issue number 1 was not pressed, and that the case was set for the evidence of the workman on these issues which was pointed out by him in a matter for production of documents before this Tribunal. He stated that if at all necessary he shall produce, these documents were to be produced at the time when the case was tried on merits, i.e., on issue number 5. So the case was fixed for the evidence of the workman on issues number 2(a), 2(b) and 2(c). Then the workman examined Shri V. K. Sachar, concerned workman as WW-7 and closed their evidence on the said issues. Then the case was fixed for arguments on these issues. Arguments were heard at length. I decided issues number 2, 2(a), 2(b), 2(c),—vide my order, dated 29th March, 1978. The learned representative for the management stated that the order, dated 29th March, 1978, settled the dispute of Shri V. K. Sachar, finally and prayed for

an interim award on that matter and that all the three disputes had been settled. And only the dispute of Shri Aram Singh, Patwari, remained pending decision. The management closed their case on the issues of the enquiry. Then the case was fixed for the evidence of the workman Shri Aram Singh, Patwari, on the vires of the enquiry. Shri Aram Singh examined himself as WW-8. When the cross-examination of this witness Shri Aram Singh WW-8 was to begin, the representative for the management expressed his inability on the ground that they shall engage another counsel Shri O. P. Malhotra, Senior Advocate. The management also moved an application for framing an additional issue which was fixed for filing reply by the workman, who filed reply. Then it was fixed for arguments which were heard. Thereafter I decided the said application,—vide my order, dated 8th December, 1978 and framed an issue as issue No. 7,—vide the said order, dated 8th December, 1978. The parties stated that issue number 7 require arguments only as it involved a pure question of law. Then the case was fixed for arguments on issue No. 7. Then part arguments were heard. Thereafter the representative for the management had prayed for an adjournment as he had to go to Bombay and thereafter the representative for the workman prayed for adjournment. Thereafter on two adjourned dates the Presiding Officer was on leave. Again adjournment was sought as the learned representative for the management was ill. Then arguments were heard at length.

The onus of issue number 7 is on the management. If issue number 7 is decided in favour of the management, whole case is decided as this is an issue on "bar of resjudicata". If this issue is decided against the management, the case is to continue on issue number 5. I, therefore, decide this issue:—

The learned representative for the management had argued the case for hours on two adjourned dates. Similarly

the learned representative for the workman also argued for hours. They cited various rulings on this issue. The learned representative for the management cited the following rulings:—

1963 I LLJ 291, 1975 II LLJ 373,
1975 II LLJ 345, 1976 II LLJ 186,
1975 Lab. I.C. page 879, 1977
Lab. I.C. page 1949, 1978 LLN
335, 1978 II LLJ page 1.

The learned representative for the workman cited 1973 I LLJ page 273, 1978 Lab. I.C. page 708, 1977 Lab. I.C. page 1668, 1977 II LLN 489, 1978 Lab. I.C. page 359, 1975 Lab. I.C. page 879, 1978 LLN page 335, 1977 Lab. I.C. 1949, 1978 II LLJ page 1, 1959 I LLJ 285, 1978 Lab. I.C. 1111, 1978 II LLJ page 412.

Some rulings were commonly cited by both the parties. I have gone through the following rulings. 1975 II LLJ page 345, holds that the principles of *resjudicata* applies to all litigation. 1975 II LLJ page 373 holds that limitation does not apply to industrial cases. 1976 II LLJ page 186 holds that *resjudicata* applies but not constructive *resjudicata*. Facts were discussed in that case. 1973 I LLJ 278 holds that section 11(a) applies to references made after 15th December, 1971 and does not apply to references which were made prior to 15th December, 1971. It also decided several points on the matter of domestic enquiry. It has also interpreted the word "fresh evidence" appearing in section 11(a). 1978 II LLJ page 412 did not find any inconsistency in the said Act regarding bonus and the Central Act "Payment of Bonus Act". 1963 I LLJ 291 is not found applicable to this case. Similarly 1965 II LLJ, page 162 is not much relevant. It deals with domestic enquiry. 1974 I LLJ page 495 holds that *resjudicata* applies. 1963 I LLJ page 291 S.C. is judgement of five Hon'ble Judges Bench on which the learned representative for the management led much emphasis. In that case it was clearly held that the finding made by the Industrial Tribunal relating to the vires of the enquiry while granting approval of the action of the management of dismissing the workman cannot be subsequently reviewed by the same Tribunal.

in a reference made to it by the appropriate Government. The learned representative for the management also cited an award given in reference number 7 of 1971 by the learned Presiding Officer, Labour Court, Rohtak, Shri M. L. Jain. The learned Presiding Officer of Labour Court, Rohtak, has held in that award that the order made by an Industrial Tribunal, in respect of the vires of the enquiry in application under section 33-2(b) of the Act cannot be disturbed by the same Tribunal in a reference made subsequently by the appropriate Government.

In a case under section 33-2(b) of the Industrial Disputes Act, the jurisdiction of the Tribunal is limited and a *prima facie* case has only to be seen. While in a regular reference the scope of jurisdiction of the Tribunal is wider. It is also a settled law that after when an approval is granted under section 33-2(b) of the Industrial Disputes Act, the workman can raise a regular reference. The findings of the Tribunal on the vires of the enquiry in an application under section 33-2(b), when operates as *resjudicata* in a regular reference, the reference to some extent is rendered helpless to the workman, and to that extent the workman cannot have a fresh "say". It may result in harshness to that extent to the workman. But the verdict given by the Hon'ble the Supreme Court of India is binding on me and I have to abide by it. Their Lordships in this judgement have considered the principles of *resjudicata* and have applied it in the matter of regular reference after application under section 33-2(b), as the record of the enquiry is the same before the Tribunal in application under section 33-2(b) and in a subsequent regular reference.

The representative for the workman argued that at the time of application under section 33-2(b) the workman did not argue and reserved his right to argue in appeal and, therefore, he argued that principles of *resjudicata* should not be applied. The representative for the management argued that if a party does not address arguments it does not mean that the principles of *resjudicata* shall not

opportunity to address arguments. He further argued that the workman did not go in appeal against that order in application under section 33-2(b). The representative for the workman argued that the word "appeal" may be interpreted to mean in a regular reference. He also argued that a statement that a party shall argue in appeal and does not argue before the Tribunal, cannot prevent the application of principles of *resjudicata*. The Presiding Officer of the Industrial Tribunal in application under section 33-2(b) has given clear finding on merits, considering all the evidence, and after giving all opportunities of hearing to the parties. He argued that the said ruling as 1963 I LLJ 291 of the Supreme Court of India applies on all fours to this case.

My learned predecessor has given a finding in an earlier application under section 33-3 of the Industrial Disputes Act that the enquiry held by the management was fair, just and proper. He had upheld the said domestic enquiry and had also upheld the findings of the Enquiry Officer. My learned predecessor found the said enquiry and findings in accordance with principles of natural justice and did not find the enquiry findings as perverse. He had upheld the enquiry findings and had granted approval to the management as sought for by them under section 33-3 of the Industrial Disputes Act.

I agree that the principles of *resjudicata* as per the above said ruling of the Hon'ble the Supreme Court of India as published in 1963 I LLJ 291 applies to this case and I abide by that ruling, and that ruling does not give me any option to depart from the law as laid down their Lordships in the said judgement. I, therefore, decide issue No. 7 in favour

of the management.

The representative for the workman further argued that even if the same finding given by my learned predecessor in application under section 33-3 of the Industrial Disputes Act is upheld by this Tribunal, section 11(a) gives wide powers to the Tribunal to give any other punishment which is warranted by the facts of the case and by evidence before this Tribunal or by evidence on the file.

This contention of the learned representative of the workman was opposed by the learned representative for the management on the authority of 1973 I LLJ 278 which clearly laid down that section 11(a) applies to reference made after 15th December, 1971, only and does not apply to references made prior to 15th December, 1971. The representative for the management vehemently argued that I cannot invoke the provisions of section 11(a) in this case, as this reference was made prior to 15th December, 1971. The reference was made to this Tribunal on 29th November, 1971, on a demand notice, dated 25th June, 1971. In view of this ruling of the Hon'ble the Supreme Court of India as reported in 1973 I LLJ page 278, I am not in a position to invoke the provisions of section 11(a) of the Industrial Disputes Act and am not in a position to interfere in the matter of awarding punishment to the workman. I find myself helpless in view of this ruling.

After deciding issue number 7 in favour of the management and holding that section 11(a) does not apply to this reference, I find that all other issues have become redundant and do not require any finding. While answering the reference I give my award that the dismissal of Shri Aram Singh, Patwari, was justified and in order. He is not entitled to any relief, as discussed above.

Dated the 12th December, 1979.

NATHU RAM SHARMA,
Presiding Officer,
Industrial Tribunal,
Haryana, Faridabad.

No. 1248, dated 31st December, 1979.

Forwarded (four copies) to the Secretary, Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

NATHU RAM SHARMA,
Presiding Officer,
Industrial Tribunal,
Haryana, Faridabad.

No. 11(112)-3Lab.-79/699.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the

following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workman and the management of M/s Berry Sons (India) Pvt. Ltd., Industrial Estate, Faridabad:—

BEFORE SHRI NATHU RAM SHARMA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD.

Reference No. 177 of 1975

between

SHRI ANT LAL, WORKMAN AND THE MANAGEMENT OF M/S BERRY SONS (INDIA) PRIVATE LIMITED, 1/45, D.L.F. INDUSTRIAL ESTATE, MATHURA ROAD, FARIDABAD.

Present:—

Shri Amar Singh Sharma, for the workman.

Shri S. L. Gupta, for the management.

AWARD

By order No. ID/FD/75/69829, dated 1st December, 1975, the Governor of Haryana referred the following dispute between the management of M/s Berry Sons (India) Private Limited, 1/45, D.L.F. Industrial Estate, Mathura Road, Faridabad and its workman Shri Ant Lal, to this Tribunal for adjudication, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947:—

Whether the termination of services of Shri Ant Lal was justified and in order ? If not, to what relief is he entitled ?

On receipt of the order of reference, notices were issued to the parties. The parties appeared and filed their pleadings. On the pleadings of the parties, following issues were framed on 11th May, 1976:—

- (1) Whether the enquiry held against the workman is proper and legal in accordance with the principles of natural justice ?
- (2) To what relief is the workman entitled ?

I held the domestic enquiry held by the management as vitiated and thereafter fixed the case for the evidence of the management. The management examined Shri Kartar Singh their Supervisor as MW-2, Shri Vinder Singh their workman as MW-3 and closed their case. Then the case was fixed for the evidence of the workman. The workman examined himself as his own witness and closed his case. Then the case

was fixed for arguments. Arguments have been heard.

I have gone through all the evidence oral as well as documentary. I have also considered the evidence advanced by the parties. MW-2 is a Supervisor in which the workman was working under him. He deposed that the workman and some others were meeting outside the factory to form a union and were persuading other workmen for a strike and for stopping workmen. At that time there was no demand. The workmen were not with him except seven or eight persons. They were doing improper and naughty acts. Some workmen told him that the concerned workman and some other workmen were intimidating thereto joining in strike and stopping work, telling that they shall break the legs of the workman. He felt danger and told the Director and requested for providing meals etc. to the workmen in order to avoid any assault while returning to their homes. The management agreed to make arrangements for boarding of the workmen. The workman concerned and five-six others took extreme steps. The workman concerned was a ring leader. Shri Shiv Shankar, Raje Ram were his close associates. On 17th May, 1975, seven or eight workmen went to slow down the work. The work which was completed in one hour was continued by them for the whole day. The workman concerned and his associates asked others not to work and put obstacles in their work. The workman complained to MW-1. MW-1 asked the workman concerned as to why he did not allow others to work, the workman abused him by uttering "MALIKON KA CHAMCHA, SALE". Slow-down lasted for about three days in denting department and in no other department. In cross-examination he stated that he was Supervisor of the denting department. There was another Supervisor also but of Press Shop and there was demand of over-time payment at double rates at the time MW-1 deposed. He also stated that the word Chamcha was used against him and some loyal workmen. He had given in writing to the management about the mischief of these persons. The workman after learning work began to play mischief. He admitted the work of this workman satisfactory prior to the workmen began to hold meetings outside the factory. At the time this witness was examined there was strike in the factory. MW-3 corroborated the statement of MW-2 in all details. He

was a workman in denting department. The workman concerned was a helper.

The workman concerned stated that he was turned out of the work without any reason. He had demanded over-time at double rates and Dearness Allowance. The management did not accept to his demands. He formed a union. Some other workmen were also turned out from the management. In cross-examination he could not name those persons. He also cited that two workmen out of the twelve expelled have been taken back on duty. He could not tell whether some cases proceeded or not in the matter of S/Shri Som Nath and Raje Ram. He could not tell the name of the union but stated that the union was of Ref Flag and there was another leader of the union who had run away. He further admitted that he did not complain in writing regarding payment of over-time to the management at single rate. He further admitted that dearness allowance was not paid to any workman. He also admitted that he had nothing in writing by which he could prove his allegations regarding over-time and dearness allowance. He denied a suggestion that he had caused stoppage of work in the factory and had caused a quarrel in the factory. The evidence of the management is convincing. There is neither any material discrepancy in the evidence of the management, nor any contradiction. The acts of the workman are of major misconduct which warrants dismissal.

While answering the reference, I give my award that the termination of services of the workman concerned Shri Ant Lal was justified and in order. He is not entitled to any relief. Dated the 11th December, 1979.

NATHU RAM SHARMA,
Presiding Officer,
Industrial Tribunal,
Haryana, Faridabad.

No. 1247, dated 31st December, 1979.

Forwarded (four copies) to the Secretary to Government Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

NATHU RAM SHARMA,
Presiding Officer,
Industrial Tribunal,
Haryana, Faridabad.